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SUPREME COURT U.S.

NO. 81-6512

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

ROBERT ALTON HARRIS,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the state can constitutionally execute a defendant condemned at a penalty proceeding which lacks the principal procedural protections approved in Gregg v. Georgia (1976) 428 U.S. 153, et al. The California sentencing statute has no burden of proof on such fundamental issues as: fact finding, determination of whether aggravating factors outweigh mitigating circumstances, and finding beyond a reasonable doubt that death is the appropriate punishment.

2. Whether the decision in Estelle v. Smith (1981) 451 U.S. 454, requires a capital murder suspect to be advised that anything he says to a prosecution-retained psychiatrist on the evening of his arrest could be used against him at a death penalty proceeding, that the psychiatrist has been retained by the prosecution, and that the purpose of the interview is to establish the absence of possible mental defenses and character evidence for possible use by the prosecution in rebuttal at the penalty phase trial. Further, should such a suspect have a non-waivable right to consult with counsel prior to such an interview?

3. Whether petitioner is entitled to any review of his death sentence by the state high court to determine if his sentence is arbitrary, discriminatory or disproportionate to the sentence imposed on other capital-eligible defendants, particularly where the penalty hearing at which the death sentence was imposed lacked most of the procedural protections approved in Gregg.

4. Even if the state high court does not initiate its own review for arbitrariness and discrimination, whether the court must afford a capitally-sentenced defendant an

opportunity for a full hearing when he has specifically alleged Eighth and Fourteenth Amendment violations and supported the claims by a prima facie showing and offer of proof.

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OCTOBER TERM, 1981

NO._____

ROBERT ALTON HARRIS,

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v.

STATE OF CALIFORNIA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioner, Robert Alton Harris, respectfully prays that a writ of certiorari issue to review the order of the California Supreme Court issued on January 13, 1982, denying his petition for writ of habeas corpus after previously affirming his conviction and sentence of death on February 11, 1981.

PROCEEDINGS BELOW [1/]

The opinion of the Supreme Court of California

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1. After the denial of hearing on these issues in the California Supreme Court, petitioner secured a stay of execution on March 12, 1982 from the Ninth Circuit Court of Appeals pending resolution of his federal habeas petition filed in federal court on March 5, 1982.

affirming petitioner's conviction and his sentence of death is reported at 28 Cal.3d 935 (1981). The order of the Supreme Court denying petitioner's timely petition for writ of habeas corpus is attached as Appendix A to this petition.

JURISDICTION

The jurisdiction of this court is invoked pursuant to 28 U.S.C. section 1257(3) and Rule 17 of the Rules of this court.

CONSTITUTIONAL PROVISIONS

The Fifth Amendment provides in part:

> "No person shall be . . . deprived of life, liberty, or property, without due process of law; . . ."

The Eighth Amendment provides:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Fourteenth Amendment provides in part:

> " . . . No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTORY PROVISIONS

A. The 1977 Legislative Enactments Which Are Applicable to Petitioner's Case.

Penal Code, section 190.2 provides:

> "The penalty for a defendant found guilty of murder in the first degree shall be death or confinement in the state prison for life without possibility of parole in any case in which one or more of the following special circumstances has been charged and specially found, in a proceeding under Section 190.4, to be true.
>
> * * *
>
> "(e) The defendant was personally present during the commission of the act or acts causing death, and with intent to cause death physically aided or committed such act or acts causing death and any of the following additional circumstances exists.
>
> * * *
>
> "(3) The murder was willful, deliberate, and premeditated and was committed during the commission or attempted commission of any of the following crimes:
>
> * * *

"(i) Robbery in violation of Section 211.

"(ii) Kidnapping, in violation of Section 207 or Section 209 . . .

* * *

"(5) The defendant has in this proceeding been convicted of more than one offense of murder of the first or second degree, or has been convicted in a prior proceeding of the offense of murder of the first or second degree. For the purpose of this paragraph an offense committed in another jurisdiction which if committed in California would be punishable as first or second degree murder shall be deemed to be murder in the first or second degree."

"Penal Code, Section 190.3 provides:

"If the defendant has been found guilty of murder in the first degree, and a special circumstance has been charged and found to be true . . . the trier of fact shall determine whether the penalty shall be death or life imprisonment without possibility of parole. In the proceedings on the question of penalty, evidence may be presented by both the people and the defendant as to any matter relevant to aggravation, mitigation, and sentence, including, but not limited to, the nature and circumstances of the present offense, the presence or absence of other criminal activity by the defendant which involved the use or attempted use of force or violence or which involved the expressed or implied threat to use force of violence, and the defendant's character, background, history, mental condition and physical condition.

* * *

"In determining the penalty, the trier of fact shall take into account any of the following factors if relevant:

"(a) The circumstances of the crime of which the defendant was convicted in the present proceeding and the existence of any special circumstances found to be true pursuant to Section 190.1.

"(b) The presence or absence of criminal activity by the defendant which involved the use or attempted use of force or violence or the expressed or implied threat to use force or violence.

"(c) Whether or not the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.

"(d) Whether or not the victim was a participant in the defendant's homicidal conduct or consented to the homicidal act.

"(e) Whether or not the offense was committed under circumstances which the defendant reasonably believed to be a moral justification or extenuation for his conduct.

"(f) Whether or not the defendant acted under extreme duress or under the substantial domination of another person.

"(g) Whether or not at the time of the offense the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or the affects of intoxication.

"(h) The age of the defendant at the time of the crime.

"(i) Whether or not the defendant was an accomplice to the offense and his participation in the commission of the offense was relatively minor.

"(j) Any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime.

"After having heard and received all of the evidence, the trier of fact shall consider, take into account and be guided by the aggravating and mitigating circumstances referred to in this section, and shall determine whether the penalty shall be death or life imprisonment without the possibility of parole."

STATEMENT OF THE CASE

The petitioner, Robert Alton Harris, was convicted after a jury trial of the offenses of kidnapping, robbery and first degree murder of John Mayeski and Michael Baker. The jury also found special circumstances existed as to each of the homicides of which petitioner was convicted (more than one first degree murder [California Penal Code § 190.2(c)(5)]: each murder willful, deliberate, premeditated and committed during the commission of kidnapping and robbery [California Penal Code § 190.2(c)(3)(i-iii)].)

At the penalty phase the jury fixed the penalty at death. On automatic appeal, the California Supreme Court affirmed and this court denied a petition for certiorari thereafter. Petitioner then brought a state petition for

writ of habeas corpus attacking his conviction on federal constitutional grounds including all issues raised in this pleading. On November 24, 1981, the Superior Court of San Diego summarily denied the petition, likewise the intermediate Court of Appeal on November 25, 1981, and finally the California Supreme Court denied the petition on January 13, 1982.

STATEMENT OF FACTS[2/]

In the penalty phase of petitioner's trial, he took the witness stand and admitted the killings for which he was on trial. Petitioner had earlier contended in the guilt phase of his trial that these killings were actually committed by his brother, and that he had confessed to them in order to protect his brother. In his penalty phase testimony, petitioner retracted his earlier exculpatory testimony, but testified that he felt remorse for his actions. In support of this contention, a jail guard, Deputy Mendoza, was called to the witness stand to recount petitioner's expressions of remorse to him following an apparent suicide attempt.

In rebuttal in the penalty phase, the prosecution introduced the testimony of Dr. Wait Griswold, a psychiatrist who had examined petitioner in the early morning hours of July 6, 1978, the day of the arrest. Griswold testified that based upon his interview with petitioner, and a review

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2. For purposes of this petition, petitioner adopts the statement of facts in the opinion of the California Supreme Court affirming his death judgment on automatic appeal (28 Cal.3d 935).

of records relating his prior adjustment to incarceration, petitioner suffered from a personality disorder which the doctor termed a "sociopathic" or antisocial personality (RT 4646-4651). According to Griswold, one of the manifestations of the personality disorder which petitioner exhibited was a lack of remorse for his actions. Further, Griswold testified that he would expect a person possessing such a personality disorder to feel remorse or concern for his having been apprehended or convicted of the killings, but not true remorse for the victims. (RT 4646, 4655, 4646-4656).

Griswold's damning testimony concerning his analysis of petitioner's personality disorder, and the manifestation of that disorder, were, by his testimony, based substantially upon the statements made by petitioner to him in the early morning hours of July 6, 1978, following his arrest at approximately 1:20 p.m. on July 5, 1978. As of the time of the interview with Dr. Griswold, petitioner had already been interrogated concerning his participation in the killings at approximately 6:30 p.m. by members of the San Diego Police Department Homicide Team investigating the crime. (RT 3071-3072). In this interview, which lasted approximately one hour and forty minutes, petitioner, after having been advised of his rights per Miranda, admitted his guilt to the investigating officers. Although petitioner was again warned of his rights per Miranda by a police officer who escorted him to Griswold's office prior to the psychiatrist's interview with petitioner, petitioner was not informed and did not understand that the primary purpose of this interview was fundamentally different from that which had

preceded it and in which he had confessed his guilt. Specifically, petitioner was not aware at this time the offenses to which he had previously confessed were capital crimes. Moreover, petitioner was not advised nor was he aware that his statements to the psychiatrist could and would be used against him in the penalty phase of a capital trial by the prosecution in seeking to have the death penalty imposed upon him.

ARGUMENT

I

PETITIONER'S DUE PROCESS RIGHTS WERE VIOLATED WHEN THE COURT NEGLECTED TO INSTRUCT THE JURY THAT THE DEATH PENALTY COULD BE IMPOSED ONLY IF THEY WERE CONVINCED BEYOND A REASONABLE DOUBT THAT DEATH WAS THE APPROPRIATE PUNISHMENT

"Given the gravity of the decision to be made at the penalty phase, the state is not relieved of the obligation to observe fundamental constitutional guarantees." (Estelle v. Smith (1981) 451 U.S. 454, 68 L.Ed.2d 359.) One of those guarantees is the due process requirement that a criminal proceeding contain procedural devices to minimize the risk of error. Most important of those safeguards is the "burden of proof," which, in both its allocation and its certainty, is a "fundamental assessment of the comparative social costs of erroneous factual determinations." (In re Winship (1970) 397 U.S. 358, 364 [25 L.Ed.2d 368].) Since the consequences of the penalty decision can be so grimly final, the jury must be told that death can be imposed only if they are convinced beyond a reasonable doubt that it is the appropriate penalty. (U.S. Const., Amend. XIV; Cal. Const., art. I, § 7, subd. (a); art. I, § 15; Speiser v. Randall (1958) 357 U.S. 513 [2 L.Ed.2d 1460]; In re Winship, supra; Santosky v. Kramer 50 USLW 4333(3/24/82).)

The Court has not addressed this question. The California Supreme Court rejected the claim that the Eighth Amendment requires a penalty burden of proof. (People v. Frierson (1979) 25 Cal.3d 142, at p. 180.) The Speiser-Winship due process roots for a burden of proof are

analytically different than the Eighth Amendment analysis, however, and only California Chief Justice Bird has expressed an opinion on the distinct due process issue. (People v. Jackson (1980) 28 Cal.3d 264, 356-357 [dis.opn.].)

The requirements of due process relative to a standard of proof depend upon the significance of what is at stake and the interest in reducing the likelihood of erroneous results. (In re Winship, supra, 397 U.S. 358, 363-364.) An assessment of these factors in a penalty phase of a capital trial compels the conclusion that due process requires the state to bear the burden of proving beyond a reasonable doubt that death is the appropriate penalty.[3/]

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3. If the jury were instructed relative to what constituted aggravating and mitigating circumstances, the state could meet its burden by proving specific aggravating factors exist beyond a reasonable doubt (see Gregg v. Georgia (1976) 428 U.S. 153; Jurek v. Texas (1976) 428 U.S. 262) or possibly if at least the aggravating factors outweighed mitigating factors (see Proffitt v. Florida (1976) 428 U.S. 242). The three capital sentencing schemes upheld by this Court are in sharp contrast to California's law. The Georgia law approved in Gregg required the jury to find at least one aggravating circumstance beyond a reasonable doubt. (428 U.S. at p. 161.) Texas asked its jury to find the truth of three specified penalty questions beyond a reasonable doubt. (Jurek v. Texas, supra, 428 U.S. at p. 268.) And in Florida, the sentencer was at least told to determine whether the mitigating circumstances outweighed the aggravating. (Proffitt v. Florida, supra, 428 U.S. at pp. 248-249.) In contrast, the California statute provides for no burden of proof and despite

[Fn. continued]

The allocation of a burden of proof symbolizes the significance of what is at stake. In this sense, it is a statement of belief that the more serious the consequences of the decision being made, the greater the necessity that the decisionmaker reach "a subjective state of certitude" that his decision is appropriate. (In re Winship, supra, 397 U.S. 358. 364.)

A recent case suggests the Fourteenth Amendment requires a reasonable doubt standard in the penalty phase: "Missouri's use of the reasonable doubt standard indicates that in a capital sentencing proceeding, it is the State, not the defendant, that should bear 'almost the entire risk of error.'" (Bullington v. Missouri (1981) 451 U.S. 430, 68 L.Ed.2d 270.)[4/]

Petitioner's jury was not told how to weigh the aggravating and mitigating evidence nor were they given any degree of proof for aggravating factors. They determined petitioner's ultimate fate without even the degree of certainty used to decide cases in Small Claims Court. If the state must satisfy the reasonable doubt standard before committing someone to a mental institution or convicting him of vagrancy, then it must meet the same standard when it wishes to use its gas chamber. The statute is constitutionally lacking for not requiring the reasonable doubt standard at the penalty phase.

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petitioner's objection, no such instruction was given. Petitioner in fact requested an instruction that the People had the burden of proof beyond a reasonable doubt to show death was the appropriate punishment(RT 3934-3946).

4. The implications of Bullington are that if the state treats a penalty hearing as a full-blown criminal trial, then constitutional procedures such as double jeopardy (and burden of proof) attach to the proceeding.

II

THIS COURT'S RECENT DECISION IN ESTELLE V. SMITH (1981) 451 U.S. 454 REQUIRES: THAT A SUSPECT IN A CAPITAL CASE WITHOUT COUNSEL BE ADVISED THAT ANYTHING HE SAYS TO A PROSECUTION-RETAINED PSYCHIATRIST MAY BE USED AS EVIDENCE TO CONVINCE A JURY TO PUT HIM TO DEATH; AND FURTHER THAT THE DECISION TO UNDERGO SUCH AN EXAMINATION BE MADE ONLY AFTER THE DEFENDANT CONSULTS COUNSEL

Estelle presented the question whether in capital cases the Fifth Amendment requires a suspect to be advised prior to a pre-trial psychiatric examination that he has a right to remain silent and that any statement he makes may be used against him "at a sentencing proceeding." (Id. at 68 L.Ed2d 368.) Estelle answers the question in the affirmative.

Like the defendant in Estelle, petitioner "did not voluntarily consent to the pre-trial psychiatric examination after being informed of his right to remain silent and the possible use of his statements, . . ." (id. at 372, emphasis added). Too, "he was given no indication that the compulsory[5/] examination would be used to gather evidence necessary to decide whether, if convicted, he should be sentenced to death," and not afforded an opportunity to consult with counsel. Without this essential information, petitioner could only assume that the purpose

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5. In petitioner's case the psychiatric examination by an expert on retainer to the prosecution was conducted on the night of his arrest outside the judicial process at a time when petitioner was unrepresented. Petitioner had not yet been arraigned upon the charges and had not had an attorney

of his interview with Dr. Griswold was for the purpose of helping him. He had just confessed to the police and could hardly assume that an additional confession to a psychiatrist would cause him further detriment. In our culture, doctors heal, treat, mend and take an oath not to harm patients. This is what petitioner believed when he saw Dr. Griswold. The context of the meeting with Griswold was "I want to help you." The unspoken reality was "I very well may assist the prosecution in killing you."

This is the very evil Estelle seeks to preclude -- a defendant should not be the deluded instrument of his own destruction (id. at 369).[6/]

While petitioner in the instant case was afforded a standard Miranda admonition prior to speaking with Dr. Griswold, he "did not voluntarily consent to the pre-trial psychiatric examination after being informed of his right

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[Fn. 5 continued]
appointed to represent him as of this stage in the proceedings. Thus, he "was denied the assistance of his attorneys in making the significant decision of whether to submit to the examination and to what end the psychiatrist's findings could be employed." (Estelle v. Smith, 68 L.Ed.2d 374). In Estelle, the psychiatric interview was court ordered.

6. Professor Welsh White recently reviewed Estelle (Waiver and the Death Penalty: The Implications of Estelle v. Smith (1981)72 Jour. Crim.L. & Criminology (1522 at 1537)) and found a substantial policy basis for the court's implicit holding that

> "If the defendant's statement is to be used against him in the penalty phase of a capital trial, then knowledge that the statement may be used for this purpose should be essential to a valid waiver under Miranda. A capital defendant who lacks such knowledge will not be aware of the true nature of the adversary interests involved."

to remain silent and the possible use of his statements . . . ." Estelle v. Smith, 68 L.Ed.2d 372.[7] Thus, his waivers of his right to remain silent and to the assistance of an attorney were not knowing and intelligent. In order to be constitutionally valid. a waiver "must not only be voluntary, but constitute a knowing and intelligent relinquishment or abandonment of a known right or privilege, a matter which depends . . . 'upon the particular facts and circumstances surrounding [each] case . . . .'" Edwards v. Arizona, 68 L.Ed.2d 378, 385 (1981).

Assuming rights waivers can be knowingly and intelligently taken from a defendant in similar situations[8]

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7. The American Psychiatric Association (APA) recognizes the compelling need for total disclosure to a criminal suspect of the nature and purpose of a psychiatric examination. In its brief to this Court in Estelle v. Smith, APA noted the ethical requirements in such a context. In a capital case, APA deems it a minimum that the defendant be informed of the nature and purpose and lack of confidentiality of the examination. Further, APA deems it a minimum that the psychiatrist identify his position and role to the defendant. See Amicus Brief, page 30, n. 20.

8. Can such a waiver of counsel be made where the prosecution seeks an ex parte psychiatric interview with a capitally accused suspect? As this Court noted in Estelle v. Smith, supra, at 68 L.Ed.2d 374:

> "Because '[a] layman may not be aware of the precise scope, the nuances, and the boundaries of his Fifth Amendment privilege,' the assertion of that right 'often depends upon legal advice from someone who is trained and skilled in the subject matter.' [Citations.] As the Court of Appeals observed, the decision to be made regarding the proposed psychiatric evaluation is 'literally a life or death matter' and

[Fn. 8 continued]

the defendant must be informed of the biases of the psychiatrist, the purpose of the interview (investigating potential mental defenses as well as character) and informed that the doctor's opinion may be used against him at the sentencing proceeding. This was not done in the instant case.

Since petitioner's waiver was not a "knowing and intelligent relinquishment or abandonment of a known right or privilege," his statements to Griswold, which substantially contributed to the psychiatrist's opinion and were used to condemn him to death, were not voluntary, and should have been suppressed.

[Fn. 8 continued]

> is 'difficult . . . even for an attorney' because it requires 'a knowledge of what other evidence is available, of the particular psychiatrist's biases and predilections, [and] of possible alternative strategies at the sentencing hearing.' 602 F.2d, at 708. It follows logically from our precedents that a defendant should not be forced to resolve such an important issue without 'the guiding hand of counsel.' [Citations.]"

Under the circumstances of such interviews, who is it that will provide the advice as to the psychiatrist's biases and predelictions, the amount of evidence available against the defendant or the possible sentencing strategy? The police? The hand-picked prosecution psychiatrist conducting the interview with the obvious purpose of defeating potential diminished capacity and insanity defenses? Hardly. True consent and knowing waivers are most unlikely where the psychiatrist is selected because of his bias and the context of the interview is seductively misleading, if not an outright fraud.

III

PETITIONER HAS NEVER BEEN AFFORDED REVIEW OF HIS DEATH SENTENCE BY ANY CALIFORNIA COURT IN ORDER TO INSURE THAT THE PENALTY OF DEATH IS PROPORTIONATELY APPLIED AS REQUIRED BY GREGG V. GEORGIA, SUPRA, AT 205; PROFFITT V. FLORIDA, SUPRA, AT 251; JUREK V. TEXAS, SUPRA, AT 276. IN ANY EVENT, HIS SENTENCE OF DEATH IS ARBITRARY AND DISCRIMINATORY IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS

The California death legislation under which petitioner was sentenced failed to provide for meaningful and effective proportionality review and thus invited arbitrary and discriminatory imposition of the death penalty. In an attempt to remedy this glaring defect in the statutory scheme under which petitioner was convicted and sentenced to death, the California Supreme Court in People v. Frierson, supra, stated: "We stand fully prepared to afford whatever kind of proportionality review may be held constitutionally mandated by the high court." 28 Cal.3d at 317. This statement in the plurality opinion in Frierson, supra, does not commit the Supreme Court of California to engage in any kind of proportionality review. Nor is the review described in the lead opinion constitutionally adequate to insure that the death penalty in a particular case is imposed in a consistent and rational manner.

What the lead opinions in Jurek, supra, Proffit, supra, and Gregg, supra, contemplate is a prompt judicial-

review of the sentencing decision to insure that the death sentence in a particular case is consistent with other sentences imposed under similar circumstances. (See, Proffitt, supra, at 251, 253; Gregg, supra, at 204-206; cf. Woodson v. North Carolina, 428 U.S. 280, 303, n. 38.) True proportionality review does not contemplate alone an inquiry into the sufficiency of the evidence to support a death sentence, which the Frierson plurality appears to consider an adequate protection against disproportionate punishment. Indeed, William Henry Furman's death judgment would have been upheld if this court's review had been limited to the scope delineated by the Frierson plurality. Rather, what is required to insure rational consistency is appellate review in which the court may compare similar cases in which the death penalty could have been or was actually imposed. In making the comparisons, the court must look to the severity of the offense and the background and characteristics of the individual defendants to determine whether a death sentence in any particular case has been imposed in an arbitrary or discriminatory manner.

IV

EVEN IF THE CALIFORNIA SUPREME COURT IS NOT OBLIGATED TO INITIATE ON ITS OWN REVIEW FOR ARBITRARINESS AND DISCRIMINATION, PETITIONER SHOULD HAVE BEEN AFFORDED AN OPPORTUNITY FOR FULL HEARING WHEN HE RAISED SPECIFIC CLAIMS OF ARBITRARINESS AND DISCRIMINATION AND SUPPORTED THEM BY A PRIMA FACIE SHOWING AND OFFER OF PROOF

Petitioner pleaded with great specificity that his death sentence was imposed in an arbitrary, discriminatory and disproportionate manner, in violation of his Eighth and Fourteenth Amendment rights. These claims were supported by a prima facie showing, an offer of further proof, and a request for a hearing to present such proof in the state court. Petitioner's allegations, uncontroverted by any responsive pleading, were dismissed without a hearing.

It is a violation of the federal due process guarantee for a state court to foreclose any opportunity to be heard on a federal constitutional claim which was timely raised. (See Townsend v. Sain (1963) 372 U.S. 293, 312-3); Guice v. Fortenberry (5th Cir. en banc (1981) 661 F.2d 496, 506-8 (reversing and remanding for evidentiary hearing to determine petitioner's allegation regarding racial discrimination in grand jury foreman selection); Grigsby v. Mabry (8th Cir. 1980) 637 F.2d 525, 528-9 (remanding for evidentiary hearing to determine petitioner's allegation that "death qualification" of jurors deprived him of a fair trial).

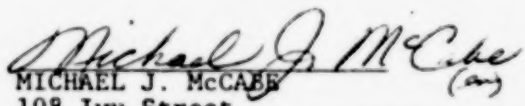
In sum, the state courts must either initiate appellate review regarding arbitrariness and discrimination in the imposition of the death penalty, or provide a forum for an individual defendant to present and prove such claims. The California Supreme Court has done neither.

CONCLUSION

For the foregoing reasons, the petitioner respectfully urges this Court grant his petition and issue a writ of certiorari.

DATED: April 8, 1982

Respectfully submitted,



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